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Supreme Court, U.S.
FILED

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Case No. ~~OFFICE OF THE CLERK~~

In the
Supreme Court of the United States

AGRIS PAVLOVSKIS,

Petitioner,

v.

THE CITY OF EAST LANSING,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

AMENDED
PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER EAST LANSING ZONING ORDINANCE SECTIONS 50-772 THROUGH 50-776 AND EAST LANSING ZONING ORDINANCE 1097, WHICH TOGETHER PROHIBIT OWNERS OF SINGLE FAMILY HOMES IN A SINGLE FAMILY ZONING DISTRICT FROM LEASING THOSE HOMES FOR SINGLE FAMILY RESIDENTIAL USE, VIOLATES THE MICHIGAN AND UNITED STATES CONSTITUTIONS.

PARTIES TO THE PROCEEDINGS

The Petitioner is Agris Pavlovskis an individual citizen of the United States and a property owner who resides in the City of East Lansing, Michigan. Mr. Pavlovskis is the Plaintiff and Appellant in the Trial Court and Appellate Courts.

The Respondents are the City of East Lansing and the East Lansing City Clerk. The Respondents are the Defendants and Appellees in the Trial Court and Appellate Courts.

The following Amicus Curiae filed briefs in support of Mr. Pavlovskis' position:

Real Property Law Section of the Michigan State Bar, Michigan Association of Home Builders, Building Industry Association of Southeast Michigan, Rental Property Owners of Michigan, Rental Property Owners Association of Kent County, Kalamazoo Area Rental Housing Association, Real Estate Investors Association of Oakland, Fair Housing Center for Metropolitan Detroit, Fair Housing Center of Southwest Michigan, Fair Housing Center of West Michigan and Fair Housing Center of Southwestern Michigan.

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The Petitioner's Application for Leave to Appeal, File No.: 135742, was denied by Order of the Michigan Supreme Court, June 25, 2008. Petitioner's Motion for Reconsideration was denied by Order of the Michigan Supreme Court, September 22, 2008.

The Petitioner's Appeal to the Michigan Court of Appeals, File No.: 275236, was reviewed on the merits and an unpublished opinion was issued on December 20, 2007, denying the requested relief.

The Ingham County Circuit Court denied Petitioner's Motion for Summary Disposition and granted Respondents' Cross-Motion for Summary Disposition by Opinion and Order issued December 6, 2006, File No.: 05-523-DZ.

JURISDICTION

This Petition for Writ of Certiorari results from an Order issued and filed by the Michigan Supreme Court, September 22, 2008, denying Petitioner's Motion for Reconsideration to grant Petitioner's Application for Leave to Appeal.

This Honorable Court has jurisdiction over the instant case pursuant to Article III, Section 2, of the Constitution of the United States, Rules of the

United States Supreme Court, Rule 10(b) and (c) and 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES

AND ORDINANCES INVOLVED

CONSTITUTION OF THE UNITED STATES

ARTICLE III

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;-to all Cases affecting Ambassadors, other public Ministers and consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a Party;-to Controversies between two or more States;-between a State and Citizens of another State;-between citizens of different States;-between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. In all Cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction

both as to Law, and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

FIFTH AMENDMENT

No person shall be held to answer for a capital, otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any

person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE

TITLE 28-JUDICIARY AND JUDICIAL

PROCEDURE

PART IV-JURISDICTION AND VENUE

CHAPTER 81-SUPREME COURT

Section 1254. Court of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

CONSTITUTION OF THE STATE OF MICHIGAN

Section 17. Self-incrimination; due process of law; fair treatment at investigations.

Sec. 17. No person shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and

executive investigations and hearings shall not be infringed.

MICHIGAN COMPILED LAW

MICHIGAN ZONING ENABLING ACT

ACT 110 OF 2006

ARTICLE TWO

125.3201.new Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations. (Appendix, Pg. 60-64)

CITY OF EAST LANSING CODE SECTIONS

AND ORDINANCES

ORDINANCE 900

An Ordinance to Amend Chapter 55, Zoning of Title V, Zoning and Planning, of the code of the City of East Lansing by Amending Sec. 5.21, 5.32 and 5.36. (Appendix, Pg. 89-93)

SUBSTITUTE ORDINANCE 1035C

Article VII. Other Districts – of Chapter 50-Zoning, Sections 50-772 through 50-776. (Appendix, Pg. 65-73)

ORDINANCE 1097

An Ordinance to Amend the Zoning Use District Map of Chapter 50-Zoning of the Code of the City of East Lansing. (Appendix, Pg. 74-86)

CHAPTER 50, ART. IV, DIV. 4

Medium Density Single-Family Residential District,
R-2, Sec.50-262, Permitted uses. (Appendix, Pg. 87-
88)

STATEMENT OF CASE

At issue in this suit is the constitutionality of zoning ordinances of the City of East Lansing, which prohibit owners of single family homes located in single family zoning districts to grant leasehold estates for single family residential use.

The Petitioner has been a resident of the City of East Lansing since 1988. Petitioner owns his home in fee simple and there is no mortgage. Petitioner has plans to build his retirement home in Canyon Beach, Oregon where he also owns private property. When Petitioner purchased his property it was zoned R-2, Medium Density Single-family Residential, which permits the principle use of the single-family dwelling, along with the rental of said dwelling. (East Lansing City Code, (ELCC), Chapter 50, Art. IV, Div. 4, Section 50-626, Appendix, Pg. 87-88). In 2005, East Lansing adopted Ordinance 1097 which created the Bailey Strathmore, R-O-1, Residential Rental Restriction Overlay District. (East Lansing Zoning Ordinance (ELZO) 1097,

Appendix, Pg.74-86). The district is a zoning classification which prohibits and restricts the rental uses of single-family dwellings within a neighborhood. Petitioner's property is located within the district at 829 Ann Street, Tax Parcel Number 33-20-02-18-148-006. (ELZO 1097, Appendix, Pg. 75).

Substitute Ordinance No. 1035C was introduced to the City Council, December 16, 2003, a public hearing was held on February 3, 2004, the Ordinance was adopted, April 7, 2004, and became effective April 15, 2004. (ELZO 1035C, Appendix, Pg. 65-73). The Ordinance includes the procedures to create zoning classifications. The Ordinance permits owners within R-1, R-2 and RM-8 residential zoning districts to circulate petitions, and present them to the Clerk's Office for verification. The proposed Ordinance is then forwarded to City Council to establish an overlay district and use regulations in residential neighborhoods. (ELZO 1035C, Section 50-775, Appendix, Pg. 67-71). The R-O-1 zoning classifications, if adopted by City Council, prohibit residents within the district from applying for rental licenses or granting leasehold estates. (ELZO 1035C, Sec. 50-774, Appendix Pg. 66-67). Substitute

Ordinance 1035C, Sec.50-774(1), defines an R-O-1 residential rental restriction overlay district as follows:

In the R-O-1 Residential Rental Restriction overlay district, permitted uses are all uses in the underlying zoning district except the use or occupancy of a one-family dwelling unit so as to require a rental housing license pursuant to Article 10 Chapter 101 of the Code of the City of East Lansing. (Appendix Pg. 67).

In the instant case, on October 19, 2004, residents of the Bailey Strathmore neighborhood submitted petitions to the City Clerk for the adoption of Ordinance 1097. Ordinance 1097 was adopted and became effective March 20, 2005. Once the Ordinance becomes effective the Petitioner cannot appeal to the Zoning Board of Appeals or apply for a variance. The adoption of an overlay district does not change the underlying R-2 residential zoning district.

In the instant case the Petitioner did not sign a petition for Ordinance 1097. Petitioner was given notice of a public hearing before the Planning Commission regarding the proposal of Ordinance 1097 which was seeking to create an R-O-1, Residential Rental Restriction Overlay District that

affected his private property. Petitioner attended the public hearings both before the Planning Commission and the City Council. At the Planning Commission and at the City Council, Petitioner requested that his property be excluded from the overlay district pursuant to East Lansing Zoning Ordinance 1035C, Section 50-775,(2)(e). (ELZO 1035C, Appendix, Pg. 70-71). At the Planning Commission Meeting a Motion to exclude several properties from Ordinance 1097, including the Petitioner's property was introduced; the motion to exclude the properties failed by a vote of 3 to 4.

Petitioner filed a Request in the Circuit Court for Declaratory Relief requesting that Ordinance 1035C and 1097 be deemed invalid. Petitioner moved the trial court to amend the Request for Declaratory Relief to include the substantive due process issues implicating the federal questions involved. Petitioner's motion was granted. (Transcript of Motion to Amend, Appendix, Pg. 55-59). Petitioner then filed the First Amended Request for Declaratory Relief and raised the federal question in Count I and II before the trial court. (First Amended Request For Declaratory Relief, Appendix, Pg. 35 & 41). Petitioner then filed a motion for summary

disposition. The Petitioner raised five issues in his motion regarding Ordinance 1035C and 1097. The constitutionality of Ordinance 1035C and Ordinance 1097 is the only issue raised by the Petitioner that is relevant to this Petition.

Respondents filed a cross motion for summary disposition. After oral argument, the trial court granted Respondents' cross-motion for summary disposition and issued an Opinion and Order on December 6, 2006. (Opinion and Order, Appendix, pg. 17-25).

The trial court failed to rule on any of Petitioner's substantive due process claims. The Michigan Court of Appeals reviews de novo constitutional issues and addressed those issues in the December 20, 2007, unpublished opinion. (Unpublished Opinion, Appendix, Pg. 4-16).

Petitioner argued that Ordinance 1035C and Ordinance 1097 do not advance a reasonable government interest as required by the Constitution's due process clause. The Court of Appeals reasoned that "[z]oning to preserve the residential character of a neighborhood by limiting the number of transient college students who can live in single-family dwelling housing has been recognized as a legitimate

and reasonable governmental interest.” (Unpublished Opinion, Appendix Pg. 11). The Court held that Ordinance 1035C survives Petitioner’s substantive due process challenge.

Petitioner also argued that Ordinance 1035C is unreasonable because there are many Ordinances already in place that further the governmental interest of preserving neighborhoods such as, traffic laws, and property maintenance codes, for example. The Court reasoned that Ordinance 1035C is an attempt by the City of East Lansing to avoid the use of the coercive power of the state to enforce violations. The court of appeals held that Ordinance 1035C is not superfluous and therefore reasonable.

Petitioner further argued that Ordinance 1097 is arbitrary and capricious because it is not based on a plan and instead is based on the arbitrary and capricious whim of residents who sign petitions. The Court held that Ordinance 1097 was based on the East Lansing comprehensive plan and therefore neither arbitrary nor capricious. The East Lansing comprehensive plan was adopted October 25, 2007, more than two years after the adoption of Ordinance 1097, which affects the Petitioner’s property, and more than three years after the adoption of

Substitute Ordinance 1035C. (Resolution to Adopt Comprehensive Plan, Appendix, Pg. 94-97).

Lastly, Petitioner argued that Ordinance 1097 is invalid spot zoning. The Court held that Ordinance 1097 is not spot zoning.

Petitioner then filled an Application for Leave to Appeal with the Supreme Court of Michigan alleging error by the Michigan Court of Appeals. Petitioner's Application for Leave to Appeal was denied. Petitioner then filled a Motion for Reconsideration the Motion was denied giving rise to this Petition for Writ of Certiorari.

ARGUMENT

INTRODUCTION

The right of a landowner to lease his land is a property right within the protection of the constitution. In the instant case the Michigan Supreme Court denied Petitioner's Application for Leave to Appeal and therefore has decided an important question of federal law that has not been, but should be decided by this Court. It has never been decided by this Court that it is reasonable when a municipality through zoning laws eliminate an entire estate in property. The City of East Lansing has infringed on the Petitioner's fundamental right to

grant a leasehold estate in his privately held property.

I

The Michigan Zoning Enabling Act permits municipalities to regulate "uses" not "users" and therefore the Ordinances are an ultra vires act on the part of the municipality because it regulates users within a single family district.

Michigan municipalities have no inherent power to enact zoning laws. The Michigan Zoning Enabling Act permits municipalities to enact zoning laws to regulate uses, not users. The East Lansing Zoning Ordinances regulate users within a single family district and are therefore ultra vires.

The general purpose of zoning is the regulation of land and not landowners. FGL & L Prop Corp v. City of Rye, 66 NY2d 111 (1985). Zoning regulates use and not the ownership, status or identity of the person who occupies the land.

Michigan law is clear on this point. The Michigan Supreme Court has said, "The entire statutory scheme of the zoning enabling act . . . is concerned with regulating uses of land and structures, not ownership. Deardon, Archbishop of the Roman Catholic Archdiocese of Detroit v Detroit, 403 Mich 257, 267; 269 NW2d 139 (1978).

Michigan's view is in accord with the generally accepted view that:

Zoning restrictions or conditions that limit the use of land based on the identity or status of the owner or occupant of the land generally are held invalid by the courts. Zoning regulation that limits the use of land based on race, economic status, age, blood relationship, or identity of the user or owner may be held invalid on either due process or equal protection grounds as an arbitrary restriction unrelated to any public purpose.

Restrictions based on the identity of the owner or occupant also may be held ultra vires as beyond the scope of authority delegated by a zoning enabling act. On this ultra vires issue, state courts have held that a zoning enabling act authorizes a municipality to regulate the use of land but not the status of the land users or owners. A controlling rationale in such case is that while zoning authorizes regulation of the use of land, it may not be exercised as an ad hominem privilege to control the landowner or occupant.

5 Zielgler, Rathkopf's The Law of Zoning and Planning, (4th Ed) sec. 81:04 (2001-2008).

Municipalities have no inherent ability to enact zoning laws and have no inherent constitutional authority to exercise the police power to zone. Clements v McCabe, 210 Mich 207; 177 NW 722 (1920); Krajenke Buick Sales v. Hamtramck City

Engineer, 322 Mich 250; 33 NW2d 781 (1948). A municipality's zoning power is derived from and is limited to the reach of the Zoning Enabling Act. Michigan Zoning Enabling Act (MZEA), MCL section 125.3101 et seq. (MZEA, Appendix, Pg. 60). An ordinance prohibiting all rentals within a zoning district is a regulation of who may use property and the user and therefore is not within the scope of East Lansing's zoning power as defined in MCL sec. 125.3201 and MCL sec. 125.3203. (MZEA, Appendix 60-64). Enacting the Ordinances was therefore an ultra vires act by the municipality.

The renting of property is not a use but is rather a type of estate conveyed and held in property. Since zoning only permits the regulation of uses, not regulation of estate holdings, the type of estate held by an occupying resident is irrelevant. While occupancy restrictions are a recognized restriction on the use of property, restrictions on the type of property interest held by a tenant have never been recognized as a legitimate use of the police power by any court.

The Ordinances at issue in this case arbitrarily prohibit leasehold estates within selected single family zoning districts, are a clear violation of the

MZEA and the long standing rule that zoning regulates use, not users of property.

II

East Lansing Zoning Ordinance Sections 50-772 through 50-776 and Ordinance 1097 Are Not Rationally Related to a Legitimate Government Interest.

The City of East Lansing limits to two the number of unrelated individuals who may occupy a single family dwelling. (ELCC, Chapter 50, Art. IV, Div. 4, Section 50-262(3)(d), Appendix, Pg. 88). However, the instant controversy involves much more than limiting the number of individuals who may occupy a home in a single family zone. The instant controversy involves a total restriction of renters, including families, from occupying a home in a single family zone. "Zoning measures must find their justification in the police power exerted in the interest of the public." State of Washington v. Roberge, 278 US 116 at 120-121; 49 S Ct 50; 73 L Ed 210 (1928). A zoning ordinance will withstand a substantive due process challenge if it is reasonably related to a legitimate government interest. It has been held that "[a] quiet place where yards are wide, people few, and motor vehicles restricted are

legitimate guidelines in a land-use project addressed to family needs.” Village of Belle Terre v. Boraas, 416 US 1, 9; 94 S Ct 1536, 1541. However, the Ordinances at issue here are not reasonable or rationally related to this, or any other legitimate governmental interest.

The Michigan Court of Appeals in its December 20, 2007 unpublished opinion reasoned that “[z]oning to preserve the residential character of a neighborhood by limiting the number of transient college students who can live in single-family dwelling housing has been recognized as a legitimate government interest.” (Unpublished Opinion, Appendix Pg. 11). Ordinance 1035C, Sec. 50-773, states the purpose of the ordinance as follows:

These districts establish three levels of restrictions which operate to preserve the attractiveness, desirability, and privacy of residential neighborhoods by precluding all or certain types of rental properties and thereby precludes the deleterious effects rental properties can have on a neighborhood with regard to property deterioration, increased density, congestion, noise and traffic levels and the reduction of property values. (Ordinance 1035C, Appendix, Pg. 65-66)

The Ordinance fails to mention limiting the number of transient college student as its purpose or

goal. The goal or purpose of the ordinances may be legitimate. It is the means used to achieve the goal or purpose that violate both the United States and Michigan Constitutions due process clauses.

Legislators may not, under the guise of the police power impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities. *Lawton v Steele* 152 US 133, 137, 14 S Ct 499, 38 L Ed 385; *Adams v Tanner*, 244 US 590, 594, 37 S Ct 662, 61 L Ed 1336, LRA 1917F, 1163, Ann Cas 1917D, 973; *Meyer v. Nebraska*, 262 US 390, 399, 400, 43 S Ct 625, 67 L Ed 1042, 29 ALR 1446; *Burns Baking Co. v. Bryan*, 264 US 504, 513, 44 S Ct 412, 68 L Ed 813, 32 ALR 661; *Norfolk Ry. V. Public Service Commission*, 265 US 70, 74, 44 S Ct 439, 68 L Ed 904; *Pierce v. Society of Sisters*, 268 US 510, 534, 535, 45 S Ct 571, 69 L Ed 1070, 39 ALR 468; *Weaver v. Palmer Bros. Co.*, 270 US 402, 412, 415, 46 S Ct 320, 70 L Ed 654; *Tyson & Brother v. Banton*, 273 US 418, 442, 47 S Ct 426, 71 L Ed 718. *Washington v Roberge*, *supra*, page 121 of 278 US (49 S Ct 52).

Even if there is a legitimate government interest in limiting the number of transient college students who may live in a single-family home in certain areas, the Ordinances go far beyond that; they are overbroad on their face because they not only affect the intended group of "transient college students,"

but also prohibit leasehold estates for professors, families and all other non-student persons who desire to rent a dwelling or residence within the respective district. These zones create an owner occupied enclave and are unconstitutional.

In addition, the ordinances also prohibit the Petitioner from pursuing the useful activity of renting his property. In Gangemi v. Zoning Board of Appeals of the Town of Fairfield, 255 Conn 143; 763 A2d 1011 (2001), the Supreme Court of Connecticut stated, "it is undisputable that the right of property owners to rent their real estate is one of the bundle of rights that, taken together, constitute the essence of ownership of property." *Supra* at 151. In Gangemi the Connecticut Supreme Court held that the continued maintenance of a no rental condition on the Plaintiff's property served no useful or legal purpose. The Court did not reach the constitutional issue and instead decided the matter on the deeply rooted public policy which favors the free and unrestricted alienability of property.

In its analysis the Court identified three economic benefits that are attached to a landowner's property, included in their "bundle of rights" and protected by the Constitution. The Court said,

"[o]wners of a single-family residence can do one of three economically productive things: (1) live in it; (2) rent it; (3) sell it. . . .Stripping the plaintiffs of essentially one-third of their bundle of economically productive rights constituting ownership is a very significant restriction on the right the ownership."
Gangemi at 151-152

The ordinances at issue in this case cause a significant restriction on the Petitioner's protected rights to own private property. Like the Plaintiffs in Gangemi the Petitioner has been stripped of his right to rent his private property. In the current economic climate the fair market value of Petitioner's property has been significantly reduced as opposed to its actual value. It is economically advantageous for the Petitioner to weather the economic storm and derive economic benefit from his private property by granting a leasehold estate as opposed to selling it. The Petitioner here does not want to occupy the property upon the completion of his retirement home in Canyon Beach, Oregon. Even though Petitioner would be required to either occupy his property or sell it. In the event the Petitioner is unable to sell his property he ultimately becomes a servant to his own private property.

The Ordinances at issue in this case clearly infringe on a property right protected by the United States and Michigan Constitutions due process clauses. The Ordinances should not be allowed to stand.

III

On a Balancing of the Public Interest Against the Interests of the Property Owner, The Ordinances are Unreasonable and Constitute a Deprivation of Property Without Due Process of Law.

In testing the validity of a zoning ordinance under the substantive due process clauses, United States Constitution, Amendments V and XIV and Michigan Constitution of 1963, Article 1, Sec. 17, a balance of the interests of the property owner against the perceived public interest is required. The more remote the regulation is from the alleged problem, the less likely it is that the regulation will be upheld. Where the benefit to be gained by the public is small in relation to the burden imposed on the landowner, it will not be upheld. Norton Theatre, Inc. v. Gribbs, 373 F Supp 363, 370 (ED Mich 1974).

The Ordinances fall far short of meeting the substantial due process test. To deal with the perceived problem of the impact of student renters on

single family residential districts, East Lansing has wielded a blunt and broad ax – it has allowed the prohibition of all renters from living in single family homes in owners' only enclaves within single family districts and it has created such an owner enclave by adopting Ordinance 1097. Thus, the burden the Ordinances impose on the Petitioner, and the burden of similar ordinances could impose is large. The burden on the Petitioner is devastating – the ordinances have deprived Petitioner of the right to derive economic benefit from his property, and eliminated an entire estate in property.

Weighing this heavy burden on property owners and the sweeping over breadth of the ordinances against the perceived public benefit to be derived, Petitioner submits that the outcome should be clear. The Ordinances do not meet constitutional muster and they must be invalidated.

IV

East Lansing Zoning Ordinance 1097 is Arbitrary and Capricious when one set of owners determines the extent and kind of use which another set of owners may make of their private property.

In Roberge, this Court invalidated an ordinance that prohibited a Trustee from dedicating

land for the legitimate use of a philanthropic home for aged poor. The ordinance in that case provided that “[a] philanthropic home for children or for old people shall be permitted in first resident district when written consent shall have been obtained of the owners of two thirds of the property within 400 feet of the proposed building.” 118 at US 278.

In the instant case Ordinance 1035C is very similar to the aforementioned ordinance in that it provides that two thirds of property owners within a proposed overlay district must sign a petition to introduce the proposed ordinance to City Counsel. ELZO 1035C, Sec. 50-775(1)(c). (Appendix Pg. 68). In fact, one of the stated goals of the ordinance “is to allow owners of property within residential neighborhoods to control the types of rental properties, if any, that are permitted in one-family dwellings within their neighborhood.” ELZO 1035C, Sec. 50-773. (Appendix Pg. 65-66)

In Roberge the Court stated the issue as follows: “Is the delegation of power to owners of adjoining land to make inoperative the permission, given by section 3(c) as amended, repugnant to the due process clause?” 120 at US 278. This Court reasoned that the landowners surrounding the area

to be developed "are not bound by any official duty, but are free to withhold consent for selfish reasons or arbitrarily and may subject the Trustee to their will or caprice.

In this case the Petitioner is subjected to the will and caprice of the property owners who signed the petitions to introduce Ordinance 1097. The landowners who signed the petitions are not bound by an official duty and can sign the petitions for selfish reasons or arbitrarily. This delegation of power is repugnant to the due process clauses of the United States and the Michigan Constitutions.

In Roberge this Court held: "As the attempted delegation of power cannot be sustained, and the restriction thereby sought to be put on the permission is arbitrary and repugnant to the due process clause . . . 122-123 at US 278. Similarly, in this case Ordinance 1097 is repugnant to the due process clause and cannot withstand the constitutional challenge by the Petitioner.

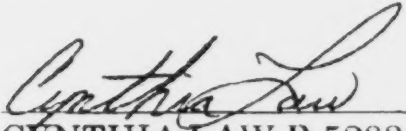
CONCLUSION

There exist compelling reasons to grant the Petition and issue a Writ of Certiorari in the instant case. Under the guise of regulating land use, Zoning

Ordinance Sections 50-772 through 50-776 and Ordinance 1097, do not regulate, they prohibit. Contrary to the decisions of this Court and other State Supreme Court decisions the State of Michigan has infringed on the Petitioner's substantive due process rights by eliminating an entire estate in property. The right to enter into a leasehold estate is a fundamental right protected by the Constitution. The ordinances at issue violate the due process clauses of the United States and Michigan Constitutions; they are overbroad and they are arbitrary and capricious. The ordinances cannot be allowed to stand. The Petitioner requires this Court to exercise its judicial discretion to protect a fundamental right guaranteed by the Constitution of the United States.

Respectfully submitted,

Dated: 3/2/09


CYNTHIA LAW P-52833
Attorney for Petitioner